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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER

UPTON, CHRISTOPHER

ART UNIT

PAPER NUMBER

1724

DATE MAILED: 06/18/2003

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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

059168

Applicant(s)

M. L. L.

Examiner

Uptm

Group Art Unit

1324

— The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address —

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- ☐ Responsive to communication(s) filed on _____
- ☐ This action is **FINAL**.
- ☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- ☒ Claim(s) 1-19 is/are pending in the application.
- Of the above claim(s) 10-19 is/are withdrawn from consideration.
- ☐ Claim(s) _____ is/are allowed.
- ☒ Claim(s) 1-9 is/are rejected.
- ☐ Claim(s) _____ is/are objected to.
- ☐ Claim(s) _____ are subject to restriction or election requirement

Application Papers

- ☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on _____ is/are objected to by the Examiner
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119 (a)-(d).
- ☐ All ☐ Some* ☐ None of the:
 - ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____
 - ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a))

*Certified copies not received: _____

Attachment(s)

- ☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____
- ☒ Notice of Reference(s) Cited, PTO-892
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Interview Summary, PTO-413
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Other _____

Office Action Summary

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1. Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-9, drawn to a method for treating runoff using iron humate, classified in class 210, subclass 747.
- II. Claims 10-19, drawn to an iron humate filter, classified in class 210, subclass 263.

2. The inventions are distinct, each from the other because:

Inventions I and II are related as process and apparatus for its practice. The inventions are distinct if it can be shown that either: (1) the process as claimed can be practiced by another materially different apparatus or by hand, or (2) the apparatus as claimed can be used to practice another and materially different process. (MPEP § 806.05(e)). In this case the process as claimed can be practiced by another materially different apparatus, such as a filter not in a mesh cage; and apparatus as claimed can be used to practice another and materially different process, such as filtration of industrial or domestic wastewater.

3. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art due to their recognized divergent subject matter restriction for examination purposes as indicated is proper.

4. During a telephone conversation with Mr. George Bode on June 12, 2003 a provisional election was made without traverse to prosecute the invention of Group

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I, claims 1-9. Affirmation of this election must be made by applicant in responding to this Office action. Claims 10-19 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1-3 and 5-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stewart in view of Musgrove.

Stewart discloses the treatment of runoff with a humus material to remove pollutants, substantially as claimed. Stewart does not disclose the use of iron humate to remove phosphorus. It is known to use iron humate to remove phosphorus, as disclosed by Musgrove. It would therefore have been obvious for one of ordinary skill in the art to add iron humate to the humus material of Stewart, to improve phosphorus removal.

With respect to claim 2, note that Musgrove discloses that dairies are a known source of phosphorus (column 2, lines 3-6). With respect to claims 3 and 5, note that Stewart discloses treatment in a swale or pond (column 33, lines 6-9).

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7. Claims 4, 8 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claim 1 above, and further in view of Kimmel.

Claim 4 differs from claim 1 in recitation of a wetlands system, claim 8 in recitation of a pump and a humate filter, and claim 9 in recitation of two humate areas. It is known to use a pump as an alternative to a gravity system, to use multiple filtration stages, and to further treat effluent in a wetlands system, as exemplified by Kimmel. It would therefore have been obvious for one of ordinary skill in the art to add such systems to the system of claim 1, depending on the site configuration, amount of treatment desired, and other site specific variables. With respect to the recitation of fertilization with iron humate recited in claim 4, it is submitted that iron humate is well known as a fertilizer, as disclosed by several references cited in the background of the specification.

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Other references of interest include Clemenson, Cohen, Cherry, Simmering and Blowes.

9. Any inquiry concerning this communication should be directed to Christopher Upton at telephone number (703) 308-3741.



**CHRISTOPHER UPTON
PRIMARY EXAMINER**